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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902. 1903.

No. 615. 222

FREDERICK J. SCHICK, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY 24, 1903.

(18,843.)

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1 Pleas had at a regular term of the district court of the United States for the northern division of the northern district of Illinois, begun and held at the United States court-rooms, in the city of Chicago, in said division of said district, on the third Monday of December (it being the fifteenth day thereof), in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the one hundred — twenty-seventh year.

Present: The Honorable Christian C. Kohlsaat, judge of said court and the Honorable J. Otis Humphrey, judge of the district court of the United States for the southern district of Illinois, sitting in this court by designation, presiding, John C. Ames, marshal for the northern district of Illinois, and T. C. MacMillan clerk of the district court of the United States for the northern district of Illinois.

2 THE UNITED STATES
vs. } 3417.
FREDERICK J. SCHICK.

Be it remembered that heretofore to wit on the 22nd day of January, A. D. 1903, it being one of the days of the December term of the district court of the United States for the northern division of the northern district of Illinois, begun and held in the United States court-rooms in the city of Chicago, in said division of said district on the third Monday of December, it being the fifteenth day thereof in the year of our Lord one thousand nine hundred and two and of the Independence of the United States of America the one hundred and twenty-seventh year before the Honorable Christian C. Kohlsaat, judge of said court, presiding, the following order was had and entered of record in said cause, to wit:

3 THE UNITED STATES
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FREDERICK J. SCHICK.

Comes S. H. Bethea, Esq., district attorney and presents the affidavit of Joseph A. Painter and a criminal information against Frederick J. Schick based thereon and asks leave of the court to file the same; whereupon it is ordered by the court that said affidavit and information be filed and the cause placed upon the dockets of this court.

And afterwards to wit on the 22nd day of January, A. D. 1903, said affidavit was filed, the same being in the words and figures following, to wit:

In the District Court of the United States of America for the Northern District of Illinois, Northern Division.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division,* } *ss.:*

Joseph A. Painter being first duly sworn, on oath, deposes and says that he resides in the city of Chicago, Illinois; that he is a deputy internal-revenue collector in and for the first internal-revenue collection district of Illinois; that on, to wit, the 22nd day of December, A. D. 1902, Frederick J. Schick in the city of Chicago, in the division and district aforesaid, in the first internal-revenue collection district of Illinois, was a retail dealer in oleomargarine; that the said Frederick J. Schick at the time and place aforesaid, so being such retail dealer in oleomargarine, unlawfully did knowingly purchase and receive for sale certain oleomargarine which had not been stamped according to law,
4 that is to say, ten pounds of a mixture and compound composed, as he the said Frederick J. Schick, then and there well knew, of oleo oil, neutral lard, cream, common salt, and Wells-Richardson's improved butter color; that said last-named ingredient, to wit, Wells-Richardson's improved butter color, produced an artificial coloration in the said oleomargarine that caused it to look like butter of a shade of yellow; that said oleomargarine had then lately before, to wit, on the day aforesaid, been manufactured at Chicago aforesaid, by Wm. J. Moxley, a corporation organized and existing under and by virtue of the laws of the State of Illinois; that said oleomargarine was then and there purchased and received for sale by the said Frederick J. Schick as aforesaid from the said Wm. J. Moxley, a corporation as aforesaid; and that when said oleomargarine was purchased and received for sale as aforesaid, it was contained in a new wooden original manufacturer's package to which, as the said Frederick J. Schick, then and there well knew, no coupon, stamp or stamps in the sum of ten cents for each pound of oleomargarine so contained therein had then and there been or was affixed by the said manufacturer, or by any other person, for denoting the payment of the internal-revenue tax on the oleomargarine so contained therein.

The said Joseph A. Painter therefore prays that the said Frederick J. Schick may be apprehended and held to answer said charge and to be further dealt with according to law.

Dated this 23rd day of December, A. D. 1902.

JOSEPH A. PAINTER.

Subscribed and sworn to before me this 23rd day of December, A. D. 1902.

CHAS. A. BUELL,
Deputy Clerk U. S. Dist. Court, Northern Dist. of Illinois.

Endorsed: U. S. district court for the N. dist. of Ills., N. div. No. 3417. The United States *vs.* Frederick J. Schick. Affidavit. Filed Jan. 22, 1903, at 2 o'clock p. m. T. C. MacMillan, clerk. (B.)

5 And afterwards, to wit, on the 22d day of January, A. D. 1903, there was filed in the clerk's office of said court in the above-entitled cause, a criminal information, the same being in the words and figures following, to wit:

In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the December Term, in the Year of Our Lord Nineteen Hundred and Two.

NORTHERN DISTRICT OF ILLINOIS, } *ss.:*
Northern Division, }

Be it remembered, that S. H. Bethea, attorney of the United States of America for the northern district of Illinois, who for the said United States in this behalf prosecutes, in his own person comes here into the district court of the said United States for the division and district aforesaid, on this twenty-second day of January, in this same term, and for the said United States gives the court here to understand and be informed, that Frederick J. Schick, late of the city of Chicago, in the said division and district, on the twenty-second day of December, in the year of our Lord nineteen hundred and two, at Chicago aforesaid, in the division and district aforesaid and in the first internal-revenue collection district of Illinois, was a retail dealer in oleomargarine; and that the said Frederick J. Schick then and there, so being such retail dealer in oleomargarine, unlawfully did knowingly purchase and receive for sale certain oleomargarine which had not been stamp*t* according to law,—that is to say, ten pounds of a mixture and compound composed, as he the said Frederick J. Schick well knew, of oleo oil, neutral lard, cream, common salt, and Wells-Richardson's improved butter color, (which said last-named ingredient, to wit, Wells-Richardson's improved butter color, produced an artificial coloration in the said oleomargarine that caused it to look like butter of a
6 shade of yellow), which said oleomargarine had then lately before, to wit, on the day aforesaid, been manufactured at Chicago aforesaid by William J. Moxley, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and then and there was purchased and received for sale by the said Frederick J. Schick as aforesaid from the said William J. Moxley, a corporation as aforesaid, and, when so as aforesaid purchased and received for sale, was contained in a new wooden original manufacturer's package to which, as he, the said Frederick J. Schick then and there well knew, no coupon stamp or stamps, in the sum of ten cents for each pound of oleomargarine so contained therein, then and there had been or was affixed by the said manufacturer, or by any other person, for denoting the payment of the internal-revenue tax on the oleomargarine so contained therein; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Whereupon the said attorney of the said United States who prosecutes as aforesaid for the said United States prays the consideration

of the court here in the premises, and that due process of law may be awarded against him, the said Frederick J. Schick, in this behalf, to make him, answer to the said United States concerning the premises aforesaid.

S. H. BETHEA,
United States Attorney.

Endorsed: No. 3417. U. S. district court for the N. dist. of Ills., N. div. The United States *vs.* Frederick J. Schick. Information on sec. 11, act of Aug. 2, 1886, as amended by sec. 3, act of May 9, 1902 internal-revenue laws. Filed in open court Jan. 22, 1903 at 2 o'clock p. m. T. C. MacMillan, clerk. S. H. Bethea, U. S. att'y N. dist. Ill.

7 And afterwards, to wit, on the 22nd day of January, A. D. 1903, the following order was had and entered of record in said cause, before the Hon. Christian C. Kohlsaat, judge, to wit:

THE UNITED STATES
vs. } 3417.
FREDERICK J. SCHICK.

Comes the United States by S. H. Bethea, Esq., district attorney,, comes also the defendant Frederick J. Schick, in his own proper person as well as by counsel and said defendant being arraigned upon the information filed herein against him pleads not guilty thereto and the parties having waived the intervention of a jury, the cause is submitted to the court for trial, whereupon, after the hearing by the court of the evidence by the parties adduced and arguments of counsel, the said defendant by his attorney moves the court to find the defendant not guilty, which said motion is by the court overruled and denied, to which ruling of the court said defendant by his attorney duly excepts. Thereupon the court being fully advised in the premises finds the defendant —— —— guilty as charged in the information. Thereupon the defendant by his attorney enters his motion for a new trial herein which said motion after hearing of arguments and due consideration by the court is overruled and denied, and thereupon said defendant by his attorney enters his motion in arrest of judgment which motion in arrest after hearing of arguments and due consideration by the court is overruled and denied, and said defendant being asked by the court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered by the court and as the sentence and judgment of the court upon the finding of guilty herein as aforesaid that the defendant Frederick J. Schick forfeit and pay to the United States a fine in the sum of fifty dollars besides the costs in this behalf expended, and that execution shall issue therefor.

8 And afterwards, to wit, on the 27th of January, A. D. 1903, the following order was had and entered of record in said cause, before the Hon. Christian C. Kohlsaat, judge, to wit:

THE UNITED STATES
vs. } 3417.
FREDERICK J. SCHICK.

Come the parties by their attorneys and on their motion it is ordered by the court that leave be and it hereby is given said defendant to file his waiver of jury, motion to find defendant not guilty, and motion for a new trial herein, *nunc pro tunc* as of January 22, 1903.

And afterwards, to wit, on the 27th day of January, A. D. 1903, there was filed in the clerk's office of said court, in the above-entitled cause, a waiver of jury trial, the same being in the words and figures following, to wit:

9 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA
vs. } Information.
FREDERICK J. SCHICK.

Waiver of Jury Trial.

Now, come the respective parties and, by their counsel, waive a trial by jury herein and agree to submit the issues herein to the court.

Dated January 22, 1903.

S. H. BETHEA,
For the Government.
WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
For the Defendant.

Endorsed: District court of U. S. Northern district of Ill. northern division. Waiver of jury trial. United States of America *vs.* Frederick J. Schick. Gen. No. 3417. Filed by leave of court Jan. 27, 1903, at 10 o'clock a. m. T. C. MacMillan, clerk. *Nunc pro tunc* Jan. 22, 1903.

10 And afterwards, to wit, on the 27th day of January, A. D. 1903, there was filed in the clerk's office of said court in the above-entitled cause, a motion to find the defendant not guilty, the same being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division.

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA
vs.
FREDERICK J. SCHICK. } Information.

Motion to Find the Defendant Not Guilty.

Comes now the defendant, by his counsel, and, upon the evidence before the court, moves the court to find in favor of the defendant and render a verdict and judgment of not guilty, and discharge the defendant, because the actof Congress of May 9th, 1902, which is an amendment to the act of Congress of August 2nd, 1886, relating to butter and oleomargarine, in so far as it imposes a tax of eight cents per pound in addition to the tax imposed by the said act of August 2, 1886, upon oleomargarine containing "artificial coloration that causes it to look like butter of any shade of yellow," is in contravention of the Constitution of the United States and of the
11 amendments thereto and is illegal and void, for the following reasons, to wit:

First. The act deprives the defendant and the oleomargarine manufacturers and dealers in the United States of their liberty and property without due process of law;

Second. The act is an unwarranted encroachment upon and interference with the police powers reserved to the several States and to the people of the United States;

Third. The act so arbitrarily discriminated against oleomargarine in favor of butter as to be repugnant to those fundamental principles of equality and justice which are inherent in the Constitution of the United States.

Dated January 22, 1903.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
Attorneys for Defendants.

Endorsed: U. S. district court, northern district of Ill., northern division. Motion to find the defendant not guilty. United States of America *vs.* Frederick J. Schick. Gen. No. 3417. Filed by leave of court Jan. 27, A. D. 1903, at 10 o'clock a. m. T. C. MacMillan, clerk. *Nunc pro tunc* Jan. 22, 1903.

12 And afterwards, to wit, on the 22nd day of January, A. D. 1903, there was filed in the clerk's office of said court in the above-entitled cause, a motion for a new trial, same being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA
vs.
FREDERICK J. SCHICK. } 3417. Information.

Motion for New Trial.

Now comes the defendant and moves the court to set aside the finding of guilty herein and to grant a new trial of said cause for the following reasons, to wit:

(1.) The finding is contrary to the evidence.

(2.) The finding is contrary to the law.

(3.) The court struck out and refused to consider proper evidence offered and received on behalf of the defendant.

Dated January 22nd, 1903.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
Attorneys for Defendant.

Endorsed: District court of U. S., northern district of Ill., northern division. Motion for new trial. United States of America *vs.* Frederick J. Schick. Gen. No. 3417. Filed by leave of court Jan. 27, 1903 at 10 o'clock a. m. T. C. MacMillan, clerk. *Nunc pro tunc*, Jan. 22, 1903.

13 And afterwards, to wit, on the 27th day of January, A. D. 1903, there was filed in the clerk's office of said court in the above-entitled cause, a bill of exceptions, said bill of exceptions being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA
vs.
FREDERICK J. SCHICK. } 3417. Information.

Bill of Exceptions.

Be it remembered that the above-entitled cause, coming on for trial on the 22nd day of January, A. D. 1903, the same being one of the days of the regular December term of said court for 1902, before the Honorable Christian C. Kohlsaat, judge of said court the Government appearing by its counsel, Solomon H. Bethea and Oliver E

Pagin, and the defendant appearing in person and by his counsel William D. Guthrie, Francis J. Kearful, Charles C. Carnahan and Delavan B. Cole, the following proceedings were had:

Trial by jury was waived by a stipulation in writing duly signed and filed and the cause was submitted to the court.

14 Thereupon the Government to maintain the issues on its part, introduced the following evidence:

JOSEPH A. PAINTER, called and sworn as a witness on behalf of the Government, testified as follows:

My name is Joseph A. Painter. I am deputy collector of internal revenue, first district of Illinois, embracing the city of Chicago. I know the defendant, Frederick J. Schick. He is in the retail meat and butter business, and a retail dealer in oleomargarine at No. 50 Fifth avenue, Chicago. I called at his place of business on the 22nd day of December, 1902, and found this ten-pound package of oleomargarine on which a tax was paid at the rate of two cents per pound. It was packed and branded according to law. It had been manufactured in December, 1902, by William J. Moxley, incorporated, factory corner Clinton and Randolph streets, Chicago. The ingredients of that oleomargarine were oleo oil, neutral lard, cream, common salt and Wells-Richardson improved butter color. It is of a yellow color and looks like natural yellow butter. The defendant admitted at the time that he had just received the package for

15 sale knowing its character and ingredients and the amount of tax paid on it.

Mr. KEARFUL: You do not contend that he intended to sell it for butter, do you?

Mr. PAGIN: Oh, no.

Thereupon the Government rested.

Thereupon, the defendant to maintain the issues on his part, offered and introduced the following evidence:

ANDREW E. BERGLAND, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. KEARFUL:

My name is Andrew E. Bergland. I am employed by the Moxley Company as foreman and have been so employed for 18 years, about. I superintended the manufacture of the article just testified to by the internal-revenue collector, and can state the proportions of the ingredients contained in that article. There was 2 lbs. and 8 oz. of oleo oil; 4 lbs. and 7¾ oz. of neutral lard; 1 lb. and 12 oz. of cream; 1 lb. and 4 oz. of salt; and a quarter of an ounce of color, Wells-Richardson's improved butter color. That was according to a formula which is used in the course of business at

16 the factory. We call it special grade.

It is one of the high grades. It is designed to be used as a substitute for butter.

MARK DE LA FONTAINE, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. KEARFUL:

My name is Mark de la Fontaine. I am a chemist and have been a chemist nearly 50 years. I am familiar with the chemical properties of oleomargarine or butterine and butter.

(The ingredients of the article in question and their proportions as testified to by the previous witness were read to this witness as follows: 2 lbs. and 8 oz. of oleo oil; 4 lbs. and 7¾ oz. of neutral lard; 1 lb. and 12 oz. of cream; 1 lb. and 4 oz. of salt; and a quarter of an ounce of color, Wells-Richardson's improved butter color.)

I can state the difference between the chemical properties of the article manufactured according to the formula just read and pure creamery or dairy butter. Considering only the fat part alone the difference lies in this, that the creamery butter contains on an average about eight or nine per cent. of a mixture of butyrin and one or two others, caproin and caprin, in very small quanti-
ties, but essentially butyrin, which is almost seven per cent.,
17 whilst in oleomargarine or butterine made according to the process or formula given here, the proportion of butyrin is less, how much less depends upon the quantity of cream used. The cream is not a uniform article. Sometimes it contains more fat, sometimes less; consequently sometimes more butyrin, sometimes less. There is nothing at all in this difference which affects the wholesomeness of the article. These elements which are absent to some extent in oleomargarine in the process of nutrition play the same part as the remainder of the fat, that is, they are used mostly as fuels, they are burned out in the system and generate heat, and in that respect the properties or components that we speak of, butyrin and its first cousins, caproin and caprin, produce much less heat than the palmitin in butter.

There is a difference in the flavor on account of difference in the proportions of these components, because the flavor is largely due to butyrin and at the same time it is the butyrin which becomes rancid first, an action which has a tendency to make butter strong in flavor.

To some extent the smaller quantity of butyrin in oleomargarine is an advantage because it keeps fresh longer than butter. There are other things to consider with regard to butterine turning rancid. There is not so much curd of the cream or the milk and some fer-
ments to be worked out. With the exceptions named the
18 substances, oleomargarine and butter, are substantially similar. I don't know any difference between the palmitin, olein and stearin of butter and those of butterine or oleomargarine.

I am familiar with at least one butter color used for coloring butter and oleomargarine. It is extensively sold under the name of the Wells-Richardson improved butter color. It is a solution of a yellow coal-tar coloring matter in oil, generally cotton-seed oil. I have never found any statement that it is injurious. It is not on the list of the injurious colors. It is on the list of colors that are

permitted—that is, the use of which is allowed to confectioners as well as butter-makers. It is the same coloring matter which is universally used to color butter as well as oleomargarine. It has taken the place of annatto because it is cheaper and more desirable. It requires less of it to produce the same effect. There is nothing unwholesome about it. As I say, it is on the list of colors the use of which is allowed to butter-makers and confectioners.

Cross-examination by Mr. PAGIN:

There is no palm oil in this butter color. According to the amount used it will give to oleomargarine or butter a dark-yellow or orange or very pale-yellow color. It is simply a question of proportion or quantity.

Q. You speak of a list of prohibited or permitted colors; what do you mean by that list?

19 A. Well, some of the European governments have had the question of coal-tar colors and other colors investigated in regard to their being poisonous or not poisonous and therefore as to their being available or not for coloring articles of food. There was issued a list of the colors which are poisonous and therefore should not be used and another list of colors which are permitted. The list is recognized in this country.

Q. In the State of Illinois, under the pure-food law, is there any such list?

A. I don't know whether the pure-food law mentions any of the colors; but, for instance, you will find that list in Leffman & Beam on the Analysis of Food. Then a similar list is in the circular published by the National Association of Confectioners, or a name like that, an association like that which has branches all over the United States.

Mr. KEARFUL: We have other witnesses to the same facts.

Mr. BETHEA: Well, that is enough.

The COURT: You may consider them in to corroborate it.

Mr. BETHEA: Yes.

20 HENRY BOEHMER, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. KEARFUL:

My name is Henry Boehmer. I live at Barrington, Illinois. I am a manufacturer of creamery butter. I have been engaged in business at that place or other places about 25 or 26 years, as near as I can recollect.

Q. Look at the article involved in this case and state whether or not it corresponds in color to the ordinary color of creamery butter which is put out on the market in Chicago.

A. Why, I think it is as near as we could have it as creamery butter.

I am familiar with the business of manufacturing creamery butter generally throughout the western portion of the United States.

Q. Are you able to state the custom of butter manufacturers in regard to coloring butter throughout the year?

Mr. BETHEA: I object to that. It seems to me that it is entirely immaterial and irrelevant and incompetent.

The COURT: Yes, I do not think that is proper.

Mr. KEARFUL: It seems to me, your honor, that it is necessarily a part of our case; and, while your honor may differ with me, I would like to have this evidence in.

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Mr. BETHEA: Make your offer.

The COURT: The object is to show that there is artificial coloring matter used in the manufacture of butter; is that it?

Mr. KEARFUL: Well, it goes a little further than that. I want to state the proposition to the court. This case will have to turn upon the effect of this statute as it may be observed by the court in its operation; and if it is observed to operate so as to prevent the people of the country from obtaining oleomargarine in the way in which they want it, and to destroy the business of oleomargarine because the manufacturer cannot sell it to the people in the way in which they want it, that will be one branch of our contention that it is a discrimination which deprives these parties of their liberty and property without due process of law. Now, the fact being that whether it is butter or whether it is oleomargarine the people want it a uniform shade of color throughout the year, and they won't buy white butter or they won't buy white oleomargarine, and in the presence of that fact, Congress places such a tax upon one of those articles as to prevent its being used and sold. It is therefore necessary to show as an essential fact that oleomargarine and butter, one used as a substitute for the other, are commonly colored a uniform color throughout the year, because that is the demand of the consumers; and I want to say this, that if it should turn out that our contention is correct—if your honor should take the wrong view of this matter, as courts may do sometimes—it would only result in this case being sent back for further hearing in order to determine the facts upon that point.

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The COURT: I think you may make what showing you please, and then they may move to strike it out.

Mr. BETHEA: We do not care to have it go in, but we want our objection in where we think the evidence is improper.

It was agreed that it should be understood that the Government's counsel objected to this line of testimony from any witness and to any incompetent testimony, but that the questions should be asked and answered and that the right of the Government reserved in all cases to move to strike it out.

The WITNESS: I am familiar with the custom amongst butter manufacturers in regard to using coloring matter. It is used by manufacturers the year around. We call it a June color when we speak of it for butter, what is sold in Chicago, and, for instance, at Washington, Philadelphia, and so forth, it is what we call a June color. The sample involved in this case is just about as near to perfect June color as we can get. We buy the prepared color. We used to make our own color but now we buy it,

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what we call a butter color. It is a commercial article and there are different kinds. I am acquainted with the Wells-Richardson butter color. I should think the percentage of the amount used would be in favor of the Wells-Richardson. There are other colors used a great deal like Hanson's, and so forth.

Q. To what extent throughout the year is it colored?

A. Well, there is a difference. Different places require different colors, but as a general rule, what we call a June color. It is the color that we should give it. Grass would give that color to butter. That is why we call it June color.

Q. Do you try to obtain the color of June butter?

A. Yes. That is what we call the June color.

The COURT:

Q. Don't you color June butter also?

A. Yes sir, but not as much as perhaps butter made in December. That is the only difference.

Mr. KEARFUL:

Q. What is the natural color of butter in December and other months of the year when cattle do not get clover and grass?

—. At this time of the year and the time of the year when there is no grass, it is, you might say, white, or pretty near a perfect white.

Q. In the creamery business is there any demand for butter in its natural condition and with its natural color?

24 A. No, sir.

Q. Do you know whether there is any demand amongst butter manufacturers for uncolored butter?

A. Not that I know of. I don't think there is, because what I have seen is all colored.

Q. Have you any knowledge of the character of the butter to be found upon the tables throughout the United States?

A. Why, all the butter I have seen is colored, more or less. Different places have different colors sometimes; different sections of the country each has a uniform color that it demands.

Cross-examination by Mr. BETHEA:

Q. They do not color butter in the summer time when the cows are eating clover, do they?

A. Yes, sir.

Q. Why do they do that?

A. Why—I never made butter, or saw butter made at any time of the year but that comes to what we call the June color, they all color it some. But at that time of the year, perhaps they only use—oh, about a quarter, that is when there is clover or grass, of the amount that they use at this time of year.

Q. Doesn't clover make the butter naturally a butter color, a butter yellow?

25 A. It don't make it as high color as the people want it.

Q. Well, you do not mean to say that they do not use any

butter in the natural condition at any time of the year, that nobody uses it?

The COURT: In the market, he says.

Mr. BETHEA:

Q. In the market. What do you say about that?

A. Why, I do not think that there is one farmer out of a thousand that puts on the market the kind of butter we make but that is colored the year around.

Q. You do not mean to say that in the market there is no natural butter at any time of the year?

A. Why, there is natural butter, but it is colored.

Q. I mean with the natural butter color. Suppose it is June or July?

A. I do not think there is.

Q. Isn't there any butter sold anywhere in June or July that is not colored?

A. Not what we call the regular butter put on the market.

Q. Don't the farmers bring in butter and sell it?

A. I do not think they do very much. I think most of the farmers' butter is colored.

Q. What is the use of coloring it in the summer time when it is naturally the color that gives the reputation to butterine?

A. Because the people want the color, so we color it.

The COURT: So as to make a uniform color?

26 A. Yes sir, that is the aim of coloring.

Mr. BETHEA:

Q. You can remember, can't you, when butter was sold in its natural way?

A. Why, I do in the old country, but I do not remember in this country. I have lived in this country about thirty years.

Q. Now, aren't you mistaken about that?

A. No, I am not, because I have been in business twenty-six years, I think, twenty-five or twenty-six.

Q. Do you mean to say that thirty years ago that the people in this country, the farmers, people who produced butter, colored it in the summer time?

A. I do not say thirty years, but I say twenty-six, because I have been in the business twenty-five or twenty-six years.

Q. Well, this butter was a pretty good article that was not colored, wasn't it, in its natural condition?

A. Why, as far as taste, the article is all right.

Q. Yes, and looks? Take the summer butter, how could you improve on that, natural butter, where the cows have been eating grass and clover?

A. Why, it might be all right, it would be all right for me, because I would know what it was. But for the people that we sell it to, they would rather have the color.

Q. Why? Are they afraid it is oleomargarine if it is not colored?

A. Well, that I do not know.

Mr. KEARFUL: Does the idea of the uniformity of the butter which comes into the market have anything to do with coloring butter which is already naturally a butter color?

27 The COURT: He has answered that the object of coloring it is so as to make it uniform.

Mr. BETHEA: Yes, he stated that. Now, I move to strike out his testimony as being immaterial and irrelevant.

The COURT: Of course, as an abstract proposition, it is hard to see why there should be any difference between coloring oleomargarine and coloring butter, but I cannot see but that Congress, in the exercise of its police powers, for various purposes, among which might be the assistance in detecting the difference between butter and oleomargarine, and other purposes incident to the detection of oleomargarine to prevent imposition on the public——

Mr. KEARFUL: Pardon me one moment if your honor will.

The COURT: Yes.

Mr. KEARFUL: I suggest that ruling upon this objection might be reserved until the evidence is all in, when the matter can be argued and the points presented.

The COURT: Have you got more evidence on this point?

Mr. KEARFUL: Yes sir.

The COURT: I thought you were through. I think I am sufficiently advised on the point now, and will say that for the purpose of this hearing the testimony may be stricken out.

To which ruling of the court the defendant, by his counsel, then and there duly excepted, which exception was duly allowed.

28 ANDREW AMUNDSEN, a witness produced, sworn and examined on behalf of the defendant, testified as follows:

Direct examination by Mr. KEARFUL:

My name is Andrew Amundsen. I live at 1201 Milwaukee avenue. I am in the butter and butterine business. I started five or six years ago in butter, and I could not make any success of that, so I went into butterine, and I increased it, and I doubled it every year, up till July 1st, 1902, when I was selling 2,600 pounds a week, and when the law went into effect, there was an eruption throughout the whole trade. Every customer I had quit. They didn't want it. When I came around with white butterine, they would try it once and the next time I came around they met me in the door and said "We don't want any more of your lard." Then I tried with butter, and of course the majority of my trade now they take one pound of butterine for cooking purposes, while they take two or three pounds of butter for table use. The butterine I sold came from the Wm. J. Moxley factory.

Q. What class of people did you supply with oleomargarine?

A. Well, the laboring class, the majority of them, you might say all of them, the laboring class. They knew it was oleomargarine and not butter, and they bought it because it was cheaper than butter.

Q. What districts of Chicago did you supply?

A. Well, I go as far as Dakota street, and over to Lake and over to Brighton park, and Dakota street over on the West side, Irving park, and Garfield park, and then to Lake avenue, all around.

29 Mr. BETHEA: I move to strike out the testimony of the witness as incompetent, irrelevant and immaterial.

The COURT: It may go out.

To which ruling of the court the defendant by his counsel then and there duly excepted, which exception was duly allowed.

30 CHARLES F. IZARD, a witness, produced, sworn and examined on behalf of the defendant, testified as follows:

Direct examination by Mr. KEARFUL:

My name is Charles F. Izard. I am in the restaurant business, located at 163 and 165 West Madison street, Chicago, and have been in the restaurant business for two years last April. I have used oleomargarine in my restaurant almost exclusively, except for cooking, up to July 1, 1902. Since that time we cannot use it. The reason is that people object to the color of it. They do not like the looks of it. It don't seem to give them satisfaction because it is white. Since July 1, 1902, we have been using colored butter.

Cross-examination by Mr. BETHEA:

Q. Didn't they object, or didn't they use the butterine where it was colored because they thought it was butter?

A. Why they had no objection to butterine except when it came white, except when it was white. They had no complaint to find with the oleomargarine that had color in it. It was after it came white they were objecting to using it or eating it.

Q. Why didn't you buy the colored oleomargarine when
31 they objected to the white?

A. Well, we had to do that, of course.

Q. That cost ten cents per pound more?

A. Yes, sir.

Q. Is that what you buy now?

A. Well, sometimes we buy that and sometimes we buy this other.

Q. White?

A. No, not the white, colored butter. We cannot use white at all.

Redirect examination by Mr. KEARFUL:

Q. Do you use white oleomargarine for any other purpose than for use on the table?

A. Where we don't use lard we use it for cooking.

Q. What proportion of the colored article that you now buy is oleomargarine and what proportion is butter?

A. We do not use any oleomargarine now excepting we happen to run out of butter or something of that kind. In the case of an emergency we buy it.

Q. What is the reason that you don't buy it now as formerly?
A. Well, it depends upon how much we have, that is how much the man happens to have on hand that comes along that we buy it from; something of that kind. We have objection to this ordinary oleomargarine. We have no objection to the oleomargarine that is colored at all. It gives perfect satisfaction.

Recross-examination by Mr. BETHEA:

32 Q. Can you get good butter cheaper now than you can get this colored oleomargarine?
A. No sir.
Q. Do you know what the difference is in price?
A. Well, it varies considerably. It depends upon the quantities you buy and who you buy it from.
Q. How much, about how much?
A. Oh, it may vary a couple of cents.

Mr. BETHEA: We move to strike out the testimony of this witness on the ground that it is incompetent, irrelevant and immaterial.
The COURT: Let it go out.
To which ruling of the court the defendant, by his counsel, then and there duly excepted; which exception was duly allowed.

JOHN DADIE, called and sworn as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. KEARFUL:

My name is John Dadie. I am secretary of the William J. Moxley corporation. That corporation is engaged in the manufacture of oleomargarine or butterine for sale in various parts of the United States. It manufactured the article involved in this case.
The COURT: Do you use "oleomargarine" and "butterine"
33 interchangeably?
A. We call it oleomargarine legally. In trade it is known as butterine.
Mr. PAGIN: The law defines oleomargarine to be butterine and things called by other names so that the legal term is oleomargarine.
The WITNESS: Oleomargarine or butterine is designed to be used as a substitute for butter, and we color it as butter is colored in order to compete with it. I have been engaged in the business of manufacturing oleomargarine since 1884. The capacity of the Moxley Company factory is in the neighborhood of three to four million pounds per month. It is the largest in the United States. Previous to July 1, 1902, the total output sometimes reached but never exceeded 2,000,000 pounds per month. The output since July 1st, 1902, has varied from 500,000 to 1,000,000 pounds per month. From my knowledge of the manufacture of this article I know that it cannot be produced and sold in competition with butter if the ten-cent tax is paid. This opinion is based largely

upon our experience in manufacturing artificially colored goods upon which we are compelled to pay a tax of ten cents per pound. During the first five months of the present fiscal year, beginning July 1, 1901, we failed to sell any of it at all. During the month of December we did produce and sell 37,594 pounds of artificially colored butterine or oleomargarine upon which the ten-cent tax was paid. The article turned out by our factory previous to July
34 1, 1902, was all of it artificially colored. The uncolored article which we now put out is sold at the present time in its uncolored state largely to the poorer people, and so far as we are able to ascertain, it is displacing lard and is used for cooking purposes rather than for table use.

Q. Will you state if you know why you have been able to produce and sell some colored oleomargarine upon which you have paid the ten-cent tax during the month of December, although, as you say, you cannot manufacture this article and sell it in competition with butter if you pay the ten-cent tax?

A. For the reason that the price of natural butter during the month of December has been extremely high. The market has reached 29 cents a pound, and under these conditions we have been able to produce and sell artificially colored oleomargarine upon which the ten cent-tax was paid, at the price of 24 cents a pound. Now, if the price of butter should drop back to the normal condition of 24 and 25 cents a pound, and I believe that it has within the last few days, we would be practically unable to compete with it in oleomargarine. The average price for butter the year around is approximately in the neighborhood of 25 cents a pound. I am speaking now of the best grades of creamery butter. Dairy butter is considered of a poorer grade, and is sold for considerably less money.

35 Cross-examination by Mr. PAGIN:

Q. How long prior to July 1st, 1902, were you in the business of manufacturing oleomargarine?

A. Since 1884.

Q. You said that the output of your factory never exceeded 2,000,000 pounds per month before that date?

A. Yes, sir, before July 1st, 1902, for 12 months before that time, I think the average output would approximate to one and a half million pounds per month. Since that date, July, August, September, 1902, we sold one million and a half pounds for the whole period; and October, November and December 23, sold two and a half million pounds for that period. Before July 1st, 1902, we used only the Wells-Richardson improved butter color to produce an artificial coloration. Since that date we have been using the same article. We have used some palm oil. We used that for a few days only until the Commissioner of Internal Revenue ruled that its use would subject the product to the ten-cent tax. Prior to July 1, 1902, we had only experimented with it.

Redirect examination by Mr. KEARFUL:

The reason why the uncolored oleomargarine has displaced lard and other substances for cooking purposes is because the price
36 of the two articles is practically the same. At the present time they are selling lard at twen and a quarter cents a pound and butterine at twelve and a half, and the articles being nearly the same price, oleomargarine displace- lard, because it is preferable for cooking purposes. The price of lard at the present time is considered remarkably high. It usually sells from seven to eight cents a pound at this time of the year, and if it should fall to that price the marjet for uncolored oleomargarine would be greatly reduced. As to whether we could manufacture and put on the market oleomargarine at seven or eight cents a pound, that would depend all together on the price of the ingredients that go to make up oleomargarine, but that would be highly improbable. At the present time the price of oleomargarine stock or raw material is, like butter and lard, unusually high.

Thereupon, the Government by its counsel moved to strike out the testimony of the witness; which motion was allowed by the court; to which ruling of the court the defendant, by his counsel, then and there duly excepted; which exception was by the court duly allowed.

The defendant then offered in evidence a letter of the acting Commissioner of Internal Revenue, dated November 11th, 1902, to W. D. Guthrie, which reads as follows:

"SIR: The amount of tax collected on oleomargarine at ten cents and one quarter per pound, from July 1st to October 1st 1902, *are* as follows: Oleomargarine at ten cents per pound $9,247.92,
37 oleomargarine at one quarter cent per pound, $33,718.71. The amount collected at two cents per pound during the same period of 1901, was $491,921.82.

Respectfully, ROBERT WILLIAMS, JR.,
Acting Commissioner."

Mr. BETHEA: We do not object to the form of the evidence but we object to the facts stated therein as immaterial and irrelevant.

Which objection was sustained by the court; to which ruling the defendant, by counsel, then and there duly excepted; which exception was duly allowed.

Thereupon, the defendant rested.

Thereupon, the Government in rebuttal, introduced the following evidence:

JOSEPH A. PAINTER, recalled as a witness on behalf of the Government, testified as follows:

Direct examination by Mr. BETHEA:

Q. Mr. Painter, have you made yourself acquainted with the market here in reference to the kind of butter that has been sold the last two years and is being sold now?

28 A. I am very well acquainted with it, yes sir.

Q. What is the fact about there being any butter sold in the natural condition or offered for sale?

A. Natural condition?

Q. Yes, uncolored?

A. Uncolored?

Q. Yes.

A. Well, there is some uncolored butter in the market which is confined I believe, entirely as far as I am aware, to the *Jewish* settlement, sweet butter we call it, unsalted.

Q. You do not know how much the sale of it is limited?

A. I never found it in any other locality except in the Jewish settlement. I never found it anywhere else in the city.

Q. You do not know but they may sell that at the good hotels and restaurants and cafés here to people that want it?

A. Why, they may.

Q. Have you independently any knowledge as to what kind of butter is used part of the time at the best hotels?

A. I do not know.

Thereupon, the Government rested in rebuttal.

The above and foregoing transcript contains all the evidence introduced or offered to be introduced on the trial of said cause.

39 Thereupon the defendant moved the court to find in favor of the defendant and to render a verdict and judgment of not guilty and to discharge the defendant, which motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

In the District Court, December Term, A. D. 1903.

UNITED STATES OF AMERICA }
vs. } Information.
FREDERICK J. SCHICK. }

Motion to Find the Defendant Not Guilty.

Comes now the defendant by his counsel and, upon the evidence before the court, moves the court to find in favor of the defendant and render a verdict and judgment of not guilty, and discharge the defendant, because the act of Congress of May 9th, 1902, which is an amendment to the act of Congress of August 2nd, 1886, relating to butter and oleomargarine, in so far as it imposes a tax of eight cents per pound in addition to the tax imposed by the said act of August 2, 1886, upon oleomargarine containing "artificial coloration that causes it to look like butter of any shade of yellow," is in

40 contravention of the Constitution of the United States and of the amendments thereto and is illegal and void for the following reasons, to wit:

First. The act deprives the defendant and the oleomargarine manufacturers and dealers in the United States of their liberty and property without due process of law;

Second. The act is an unwarranted encroachment upon and interference with the police powers reserved to the several States and to the people of the United States;

Third. The act so arbitrarily discriminates against oleomargarine in favor of butter as to be repugnant to those fundamental principles of equality and justice which are inherent in the Constitution of the United States.

Dated January 22, 1903.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
Attorneys for Defendant.

Mr. KEARFUL: Upon this motion we should like to be heard.

The COURT: I do not think I want to hear you. I think it is a matter so peculiarly for the Supreme Court that it should go there. I might say that it seems to me to call for the decision of that court upon the constitutionality of the act. I think the matter is well worthy of consideration. I do not think that this court,
41 however, should go back of the statute.

Mr. KEARFUL: I will concede, your honor, if you will permit me, that it would be entirely proper in a case of doubtful constitutionality for the lower court to hold a statute constitutional and let the Supreme Court pass upon it, but I believe that it is the established rule that if the statute is so clearly unconstitutional that this can be demonstrated to the court, it should be held so by that court. And while the rule is different in the case of a doubtful statute, to my mind there is no doubt here and I believe I can show the court the reasons which may induce it to believe as I do, that there is no doubt of the unconstitutionality of the statute.

The COURT: No sir, I think this matter should go to the Supreme Court and be there decided. The statute is not so doubtful in my mind as to warrant me in holding that it is unconstitutional. I therefore overrule the motion and find the defendant guilty.

To which ruling and finding of the court the defendant, by his counsel, then and there duly excepted; which exception was duly allowed.

Thereupon, the defendant presented and filed the following motion for a new trial:

42 UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } *ss:*

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA
vs.
FREDERICK J. SCHICK. } Information.

Motion for New Trial.

Now comes the defendant and moves the court to set aside the finding of guilty herein and to grant a new trial of said cause for the following reasons, to wit:

(1.) The finding is contrary to the evidence.

(2.) The finding is contrary to the law.

(3.) The court struck out and refused to consider proper evidence offered and received on behalf of the defendant.

Dated January 23rd, 1903.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
Attorneys for Defendant.

Which motion was by the court overruled; to which ruling the defendant by counsel then and there duly excepted; which exception was by the court duly allowed.

43 Thereupon, the defendant, by his counsel, presented and filed a motion in arrest of judgment upon the same grounds as those specified in his foregoing motion to find the defendant not guilty; which grounds the counsel for the respective parties agree may be here considered as inserted herein; which motion in arrest of judgment was by the court overruled; to which ruling, the defendant, by his counsel, then and there duly excepted; which exception was by the court duly allowed.

Thereupon, the defendant, being present in open court, the court pronounced its judgment upon the aforesaid finding of guilty and adjudged that the defendant pay a fine of fifty dollars ($50.00) and costs, and that execution issue therefor.

Thereupon, the defendant, by his counsel, gave oral notice in open court of his intention to apply for a writ of error to review said judgment and proceedings in the Supreme Court of the United States, and prayed for a stay of execution to enable him to prepare and file a bill of exceptions.

Thereupon, the court ordered execution of said judgment to be stayed for a period of twenty days and allowed the defendant twenty days within which to prepare and file a bill of exceptions.

44 And now in furtherance of justice and that right may be done, the defendant presents the foregoing as his bill of ex-

ceptions in this case, and prays that the same may be settled and allowed and signed and certified by the judge as provided by law.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
Attorneys for Defendant.

The foregoing bill of exceptions is true in all respects and is hereby approved, allowed and settled and made a part of the record herein.

Done in open court at the December term, 1902, and dated this 27 day of January, 1903.

KOHLSAAT, *Judge.*

Endorsed: 3417. U. S. dist. court, nor. dist. of Ill. The United States *vs.* Frederick J. Schick. Bill of exceptions. Filed Jan. 27, 1903 at 10 o'clock a. m. T. C. MacMillan, clerk.

45 And afterwards, to wit, on the 27th day of January, A. D. 1903, there were filed in the clerk's office of said court in the above-entitled cause, a petition for writ of error and assignment of errors; the same being in the words and figures following to wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } *ss:*

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA }
vs. } 3417. Information.
FREDERICK J. SCHICK. }

Petition for Writ of Error.

And now comes Federick J. Schick, defendant herein, and says that on the 22nd day of January, 1902, this court entered judgment herein in favor of the plaintiff and against this defendant, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, the defendant prays that a writ of error may issue in this behalf returnable in the Supreme Court of the United States, for the correction of the errors so complained of, that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States, and that an order may be made fixing the amount of security
46 which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the deter-

mination of said writ of error by the Supreme Court of the United States.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
Attorneys for Defendant.

47 UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA }
vs. } Information.
FREDERICK J. SCHICK. }

Assignment of Errors.

The defendant in this action, in connection with his petition for a writ of error, makes the following assignment of errors which he avers occurred upon the trial of the cause, to wit:

I.

Error in refusing to hold that the provisions of the act of Congress of May 9, 1902, amending the act of Congress of August 2, 1886, relating to oleomargarine and butter, under which the defendant was prosecuted, is in contravention of the Constitution of the United States and the amendments thereto, because:

48 (1.) The said provision deprives the defendant and the oleomargarine manufacturers and dealers in the United States of their liberty and property without due process of law.

(2.) The said provision constitutes an unwarranted encroachment upon and interference with the police powers reserved to the several States and to the people of the United States.

(3.) The said provision so arbitrarily discriminates against the oleomargarine industry in favor of the butter industry in the United States as to be repugnant to the fundamental principles of equality and justice inherent in the Constitution of the United States.

II.

Error in striking out and refusing to consider proper evidence offered and received on behalf of the defendant, showing:

(1.) That the natural color of butter varies at different seasons of the year from almost pure white in the winter season to a high shade of yellow in the spring of the year, if made from the milk of grass or clover fed cows; and that all butter during all seasons of the year, including that made from the milk of grass or clover fed cows, is uniformly colored a shade of yellow somewhat deeper than the natural color of June butter, before it is put on the market;

49 (2.) That there is no demand in the market for butter having only its natural color, except June butter, and that there is no demand in the market for oleomargarine for table use unless the same is colored a shade of yellow which causes it to look like yellow butter.

(3.) That oleomargarine is a substitute for and competes with butter, and that the market demand for both butter and oleomargarine requires that they shall have a uniform color of a shade of yellow during all seasons of the year.

(4.) That the cost of production of oleomargarine is such that, after payment of a tax of ten cents per pound thereon, as required by the said act of Congress of May 9, 1902, amending the act of August 2, 1886, relating to oleomargarine and butter, the same cannot be sold in competition with butter.

(5.) That the operation and effect of the act of Congress relating to butter and oleomargarine, of August 2, 1886, as amended by the act of Congress of May 9, 1902, are to prevent the people of the United States from obtaining oleomargarine in the condition in which
50 they want it and to destroy the oleomargarine industry in this country and unjustly to discriminate against the same in favor of the butter industry.

WILLIAM D. GUTHRIE.
FRANCIS J. KEARFUL.
CHARLES C. CARNAHAN.
DELAVAN B. COLE.

Endorsed: District court of Ill. Northern district of Ill. Northern division. Petition for writ of error and assignment of errors. No. 3417. United States of America *vs.* Frederick J. Schick. Filed Jan. 27, 1903, at 10 o'clock a. m. T. C. MacMillan, clerk.

51 And afterwards, to wit, on the 27th day of January A. D. 1903, the following order was had and entered of record in said cause, before the Hon. Christian C. Kohlsaat, judge, to wit:

UNITED STATES OF AMERICA
vs.
FREDERICK J. SCHICK. } 3417.

This 27th day of January, A. D. 1903, came the defendant by his attorney, and filed herein his petition for a writ of error and an assignment of errors, to have reversed in the Supreme Court of the United States the judgment heretofore entered herein, and thereupon the court does allow the *the* said writ of error upon the defendant giving bond according to law in the sum of five hundred dollars, which bond shall operate as a supersedeas and stay of execution upon said judgment.

52 And afterwards, to wit, on the 27th day of January, A. D. 1903, there was filed in the clerk's office of said court, in the above-entitled cause a bond on writ of error, the same being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division.

In the District Court, December Term, A. D. 1902.

UNITED STATES OF AMERICA
vs.
FREDERICK J. SCHICK. } 3417. Information.

Bond on Writ of Error.

Know all men by these presents, that we, Frederick J. Schick as principal, and William J. Moxley as surety, are held and firmly bound unto the defendant in error, The United States of America, in the full and just sum of five hundred dollars ($500) to be paid to said defendant in error, The United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seal and dated this 26th day of January in the year of our Lord one thousand nine hundred and three.

53 Whereas, lately at a district court of the United States of America, for the northern district of Illinois, northern division, in a suit pending in said court, between The United States of America, plaintiff, and Frederick J. Schick, defendant, a judgment was rendered against the said Frederick J. Schick, and the said Frederick J. Schick having obtained a writ of error and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, defendant in error, citing and admonishing it to appear at a session of the Supreme Court of the United States to be holden at the city of Washington in the District of Columbia, on or before the 26th day of February next:

Now the condition of the above obligation is such that if the said Frederick J. Schick shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

FREDERICK J. SCHICK. [SEAL.]
WILLIAM J. MOXLEY. [SEAL.]

Sealed and delivered in the presence of:
FRANCIS J. KEARFUL.
JOHN DADIE.

Approved this 27 day of January, A. D. 1903.
KOHLSAAT,
United States District Judge.

Endorsed: No. 3417. United States *vs.* Frederick J. Schick. Bond on writ of error. Filed Jan. 27, 1903 at 10 o'clock a. m. T. C. MacMillan, clerk.

54 And afterwards, to wit, on the 28th day of January, A. D. 1903, there was filed in the clerk's office of said court, in the above-entitled cause, a præcipe for record, the same being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the District Court of the United States, December Term, A. D. 1903.

UNITED STATES OF AMERICA
vs.
FREDERICK J. SCHICK. } Information. 3417.

Præcipe for Record.

The clerk of said court will make up an authenticated and complete transcript of the record in the above-entitled cause.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
Attorneys for Defendant.

Endorsed: No. 3417. District court of the United States. Northern district of Illinois. Northern division. United States of America *vs.* Frederick J. Schick. Præcipe for record. Filed Jan. 28, 1903. T. C. MacMillan, clerk.

55 NORTHERN DISTRICT OF ILLINOIS,
Northern Division, } ss:

I, T. C. MacMillan, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with præcipe filed in the cause entitled The United States *vs.* Frederick J. Schick as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago in said district and division, this second day of February A. D. 1903.

[Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.]

T. C. MACMILLAN, *Clerk.*

56 And afterwards, to wit, on the 27th day of January, A. D. 1903, there was filed in the clerk's office of said court a writ of error, in the above-entitled cause, the same being in the words and figures following, to wit:

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois, northern division, Greeting:

Because, in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said district court, before you, between The United States of America, plaintiff, and Frederick J. Schick, defendant, wherein was involved the construction and application of the Constitution of the United States, and wherein the constitutionality of a law of the United States was drawn in question, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at the city of Washington, on the 26th day of
57 February next, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of January in the year of our Lord, one thousand nine hundred and three.

[Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.]

T. C. MACMILLAN,
Clerk of the District Court of the United States for the Northern District of Illinois, Northern Division.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a true and complete copy of the record and all proceedings in the foregoing-entitled cause as witness my hand and official seal this 2nd day of February A. D. 1903.

[Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.]

T. C. MACMILLAN,
Clerk of the District Court of the United States for the Northern District of Illinois.

Copy deposited for the defendant in error in the office of the clerk of the district court of the United States for the northern district of Illinois.

[Endorsed:] Writ of error. Filed Jan. 27, 1903 T. C. MacMillan clerk.

58 *Citation.*

Supreme Court of the United States.

UNITED STATES OF AMERICA,
District Court of the Northern District of Illinois, Northern Division, } *ss:*

To the United States of America and Solomon H. Bethea and Oliver E. Pagin, its attorneys, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 26th day of February next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Illinois, northern division, wherein Frederick J. Schick is plaintiff in error and The United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 27th
59 day of January, A. D. 1903, and of the Independence of the United States the one hundred and twenty-seventh.

KOHLSAAT,
Judge of the District Court of the United States for the Northern District of Illinois, Northern Division.

Attest: T. C. MACMILLAN, *Clerk.*

Service of the within citation and receipt of a copy thereof admitted this 27th day of January, 1903.

S. H. BETHEA,
United States Att'y, Attorney for Defendant in Error.

Filed January 27, A. D. 1903.

T. C. MACMILLAN, *Clerk.*

Endorsed on cover: File No. 18,843. N. Illinois D. C. U. S. Term No. 615. Frederick J. Schick, plaintiff in error, *vs.* The United States. Filed February 24, 1903.